

APPENDIX F
ACWA Grants SFY 2010
Administrative Guidelines and Other Conditions

Requirement of the Grantee

Each grantee must enter into a grant agreement with the Department. The grant agreement will address the conditions of the grant award workplan and specific tasks, required deliverables and term dates of the project, and funding. The Department may seek modifications of the workplan and grant award prior to the execution of the final grant agreement. The grant agreement is a legal, binding document requiring both the Grantee and Department signatures for execution.

All awards are subject to appropriation and availability of funding from the sources identified.

The following guidelines are initiated to be used as a general guidance during the solicitation period. Specific grant conditions will be applied to the grant agreements based on type of project and their specific funding source when awarded.

Part A

Article 1. Project management

This project will be managed by the (*Name of Organization*), hereinafter, 'Grantee' with signatory authority for execution of the grant agreement, subsequent amendments and financial/progress reports granted to the DEC Project Manager. Delegation of signatory authority and changes in the authorized representative must be received in writing and approved by the Department.

The Grantee will acknowledge DEC funding for all reports, brochures, videos, maps, and outreach materials produced by project funds with a statement such as the following: "Paid for (in part) by the State of Alaska Department of Environmental Conservation with (*Funding Source*).

The Grantee will notify the Department immediately of any significant changes to the Organization during the term of the grant, including changes in key personnel or tax status. The Grantee will notify the Department if any changes are needed to the grant agreement. A letter of request must be submitted to the DEC Project Manager, stating the reason for the amendment and demonstrating that the project objectives and match requirements will be met by the end of the grant. Funding may be decreased if spending and performance benchmarks are not met as outlined in the workplan. Changes to the scope of work must receive prior written approval by the DEC Project Manager. Should the change significantly alter the goals or objectives of the project as awarded, it will not be allowed. Substitution of tasks that achieve the same proposed result can be negotiated with the DEC Project Manager.

When the project has been completed and all reporting requirements and deliverables have been met, the grant agreement will be closed out with an amendment that will reconcile budget line items to reflect actual expenditures.

Article 2. Reporting requirements

The Grantee agrees to provide quarterly status reports to the Department. These reports must update the Department on project progress, grant funds and match expenditures, and compliance with MBE/WBE requirements during the reporting period. Financial and progress reports will be submitted using the forms and formats provided by the Department.

Quarterly progress, financial and MBE/WBE reports are due 15 days after the end of each quarter based on the State of Alaska's fiscal year and are considered late 5 days after the due date unless otherwise specified in the workplan or with prior written approval. The final progress, financial and MBE/WBE reports and all deliverables are due July 31. Requests for reimbursement received 32 days or more after the completion date of the grant will not be reimbursed.

Payments will not be made without submission and approval of required reports. Work completed after the twenty-day period when required reports have not been submitted is at the Grantee's risk, and costs incurred may be disallowed. Repeated failure to submit reports in a timely manner could result in suspension or termination of the grant.

Submitted reports are reviewed and approved based on the workplan and budget placed in the original grant agreement. Any unreported or unapproved changes to the work plan or budget evident in reports may result in an amendment being required, costs disallowed, suspension or termination of the grant. The Grantee is required to immediately report to DEC Project Manager any unforeseen problem or project delay that may cause a change to the work plan or budget. A Quality Assurance Project Plan (QAPP), Monitoring Strategy, and Sampling Plan must be submitted and approved by the Department for all projects prior to collecting environmental monitoring data.

Article 3. Minority and Women's Business Enterprises (MBE/WBE) – The Grantee agrees to comply with the following requirements of Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements:

- (a) The Grantee accepts the following applicable Minority Business Enterprise (MBE)/Women's Business Enterprise (WBE) negotiated "fair share" goals/objectives:

Services: MBE 3.62%; WBE 2.99%
Supplies: MBE 2.36%; WBE 2.10%
Equipment: MBE 2.36%; WBE 2.10%

- (b) The Grantee must ensure to the fullest extent possible that at least the negotiated "Fair Share" percentage of Federal funds for prime contracts or subcontracts for supplies, equipment, construction, or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women, and historically black colleges and universities.

- (c) The Grantee agrees to include in its bid documents the applicable “fair share” objectives and require all of its prime contractors to include in their bid documents for subcontracts the negotiated “fair share” percentages.
- (d) The recipient agrees to follow the six affirmative steps or positive efforts stated in 40 CFR 30.44(b), 40 CFR 31.36(e), or 40 CFR 35.6580, as appropriate, and retain records documenting compliance.
- (e) The Grantee agrees to report the compliance of the above requirements with the quarterly progress and financial reports on the forms provided by the Department.

Article 4. Documentation and Record-Keeping

The Grantee shall set up a file containing the following: grant application, grant agreement and amendments; all written correspondence; progress reports; documentation for products indicated in the work plan; financial reports with backup documentation such as time sheets, travel vouchers, invoices or other records that validate expenditures or match; and any other documents pertinent to the performance of this grant agreement and completion of the project.

The State or authorized federal representative may inspect, in the manner and at any reasonable time it considers appropriate, the Grantee’s facilities, records or activities under this grant agreement.

Article 5. Payment Plan

The Department’s grant administrator will work with each Grantee to set up a payment plan for either advance payments or on a reimbursable plan.

Availability of funding from July 1, 2009 to June 30, 2010 is contingent upon approval of grant money from the Federal Funding Agency and Legislative appropriation of funds.
No expenditures incurred after June 30, 2010 are authorized under this grant.

- Advance

An advance payment will be made within ten days of execution of the grant agreement.

Additional scheduled quarterly advances in the amounts determined in the payment plan will be based on timely submission and approval of progress, financial reports and deliverables. Actual quarterly payment amounts will be calculated as follows: Scheduled payment amount less any previously advanced amount not yet spent. If the entire advance amount has been spent, and there are still significant outstanding obligations to meet prior to the end of the quarter, the Grantee may contact the assigned DEC Project Manager, to arrange for an interim payment. Documentation of outstanding obligations must be submitted before such interim payments will be approved.

The final **5%** of the grant will be paid upon completion of the project, submission of all reporting requirements, and Department approval of these reports.

All reports and deliverables required in the agreement must have been submitted and approved by the Department prior to final payment.

- Reimbursement

Eligible expenses incurred under the grant agreement will generally be reimbursed on a quarterly basis but may be reimbursed as frequently as monthly. Reimbursement will be made upon receipt and approval of the progress, financial reports, and deliverables.

Article 6. Matching Funds

The Grantee must certify that the match of cash and/or in-kind services provided for the project are supported solely with non-federal funding used exclusively for this project and is not being used to match any other federal grant. Match funds may be cash or in-kind services including volunteer time and donated supplies and must be from non-federal sources. The source of the match must be fully documented. Match activities must meet the same eligibility requirements and must conform to the same laws and regulations as the federal funds in the grant. For specific match requirements by source refer to Appendix B.

PART B

GENERAL PROVISIONS

Article 1. Definitions

“Department” refers to the Department of Environmental Conservation (DEC) within the State of Alaska.

“Authorized Signature” means the person who has the authority to sign this grant agreement and other legally binding forms related to the grant on behalf of the Grantee, Issuing Division and the Department.

“State of Alaska” fiscal year is defined as July 1st through June 30th.

In this grant and appendices, “DEC Project Manager” refers to the Environmental Specialist or other DEC staff assigned to manage the project and administer the grant. The DEC Project Manager is the primary contact between the Department and the Grantee.

Article 2. Legal Authority

The Grantee certifies by signing the grant agreement that it possesses legal authority to accept grant funds and to execute the project described in this grant agreement. The Grantee’s relationship to the Department and the State of Alaska shall be at all times as an independent Grantee.

Article 3. Governing Law

The Grantee must conform to all applicable federal, state, and local laws, ordinances, and regulations. It is the responsibility of the Grantee to ensure that all permits required for this project by federal, state or local governments have been obtained prior to any activity that requires permitting take place. All actions concerning this grant shall be brought in the Superior Court of the State of Alaska.

Article 4. Severability and Waivers

If any provision under the agreement or its application to any person or circumstances is held invalid by a court of rightful jurisdiction, this invalidity does not affect any other provisions of the grant agreement which can be given effect without the invalid provision. No condition or provision of the grant agreement can be waived unless approved by the Department in writing.

Article 5. Site Control

If the grant project involves occupancy, use, or modification of real property, the Grantee shall acquire the legal right to occupy, use, or modify the real property for the purposes of the grant and authority to access the project site to complete the proposed project.

Article 6. Sovereign Immunity

If the Grantee is an entity that possesses sovereign immunity, it is a requirement of this grant agreement that the Grantee irrevocably waives its sovereign immunity with respect to State enforcement of this grant agreement. The waiver of sovereign immunity affected by a resolution of the entity's governing body is incorporated into the grant agreement.

Article 7. Covenant Against Contingent Fee

The Grantee warrants that no person or agency has been employed or retained to solicit or secure this grant upon an agreement or understanding for a commission, percentage, contingent fee, or brokerage except employees or agencies maintained by the Grantee for the purpose of securing business. For the breach or violation of this warranty, the Department may terminate the grant without liability or in its discretion deduct from the grant price or consideration the full amount of the commission, percentage, brokerage, or contingent fee.

Article 8. Officials Not to Benefit

The Grantee must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

Article 9. Political Activity

No portion of these funds may be used for lobbying and propaganda purposes as prohibited in USC Section 1913 or Section 607(a) of Public Law 96-74.

Article 10. Obligations regarding Third-Party Relationships

The Grantee may not assign or delegate this grant, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Department. None of the work specified in this grant agreement shall be contracted by the Grantee unless stated in the grant agreement or with prior written approval from the Department. The Grantee shall remain fully obligated under the provisions of the grant agreement notwithstanding its designation of any third party or parties of the undertaking of all or part of the project described therein. The Grantee shall bind all contractors to every applicable provision.

Article 11. Local Share of Project

The Grantee shall contribute no less than 40% for Clean Water Act Funds, 33% for Southeast Sustainable Salmon Funds, one-to-one match for 310 funds and no specific match requirement for Set Aside Wellhead Protection. The matching funds may be in the form of cash or in-kind contributions. Match provided for the project must be certified as a non federal source.

Article 12. No Additional Work or Materials

No claim will be allowed for services not specifically provided for in the grant agreement which are performed or furnished by the Grantee.

Article 13. Changes

Any changes that have been agreed to by both parties will be attached and made part of the grant agreement by use of an amendment. Any such amendment must be dated and signed by both parties before the change is considered approved and effective. The change is effective upon final signature by DEC Division of Administrative Services.

Article 14. Budget Flexibility

Notwithstanding the provisions in Article 13, "Changes", the Grantee may revise the project budget without a formal amendment to the grant agreement. Such revisions are limited to a maximum of 10% of the total grant amount or \$10,000, whichever is less, over the entire term of the agreement. Such budget revisions shall be limited to changes to existing budget line items. The creation of new budget line items may only be done through a formal amendment to the grant agreement. Budget revisions may not be used to increase the project administration expenses without prior written approval from the Department.

Article 15. Financial Management and Accounting

The Grantee shall establish and maintain a financial management and accounting system that conforms to generally accepted accounting principles.

Article 16. Payment Plan

The Grantee shall comply with the payment plan established in the grant agreement. Payment plans will be established as either advance payments or on a reimbursable basis. Payments will be made after approval of required progress, financial and MBE/WBE reports.

Availability of funding is contingent upon approval of grant money from the Federal Funding Agency and Legislative appropriation of funds.

Article 17. Reporting Requirements

The Grantee shall submit all reports including but not limited to quarterly progress, financial, and MBE/WBE reports to the Department according to the schedule established in the grant agreement using the forms provided. Failure to submit progress reports or to make adequate progress may result in the Department withholding funds, suspending or terminating the grant.

Article 18. Records Maintenance and Retention

The Grantee shall keep a file for financial, progress and other records relating to the performance of the grant agreement. The file must be retained for a period of three years from the fully executed close out of the grant agreement or until final resolution of any audit findings claim or litigation related to the grant.

Article 19. Inspection of Records

The State or authorized federal representative may inspect, in the manner and at any reasonable time it considers appropriate, the Grantee's facilities, records or activities under the grant agreement.

Article 20. Interest Income

Interest earned on federal or state funds shall be reported to the Department who will make a determination if those funds can be used for the grant or will need to be returned.

Article 21. Compliance Enforcement

If the Grantee fails to comply with the terms of the Grant Agreement, or fails to use the grant for only those purposes set forth therein, the Department may take one or more of the following actions:

21.1 Right to Withhold Funds

The Department may temporarily withhold payments under the grant agreement for any violations pending correction of any deficiency by the Grantee or the Department may take more severe enforcement action.

21.2. Suspension

After written notice that the Grantee is out of compliance with the grant agreement, the Department will suspend the grant and withhold payment or prohibit the Grantee from incurring additional obligations of grant funds pending corrective action or a decision to terminate. Response must be received within 15 days of notification.

21.3 Termination for Cause

The Department, by written notice, may terminate the grant, in whole or in part, when it is in the best interest of the State at any time before the final grant payment is made. The Department shall notify the Grantee in writing of its determination to terminate, the reason for such termination, the effective date and the reason and amount for recoveries that will be made.

Article 22. Termination Due to Lack of Funding

In the event funding from the state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date of the agreement and prior to normal completion, the Department may terminate the agreement, reduce funding, or re-negotiate subject to those new funding conditions.

Article 23. Closeout

The Department will close out the grant agreement when it determines that all reporting requirements and required work has been completed. The Grantee must submit all financial performance and other reports and deliverables required as a condition of the

grant within 32 days of the expiration of this grant agreement unless otherwise stated in the work plan or with prior written approval. The Grantee shall return all unexpended grant monies to the State within 60 days of the expiration of the grant agreement.

Article 24. Audit

The Grantee must comply with the provisions of the Single Audit Act in accordance with the Office of Management and Budget (OMB) Circular A-128 or Circular 133, whichever is applicable.

Article 25. Ownership of Documents and Products

All designs, drawing, specifications, notes, artwork, computer programs, reports and other work developed with grant funds in the performance of the agreement are public domain and will be used by the State and/or public without notice or compensation to the Grantee. The Grantee agrees not to assert any rights and not to establish any claim under the design patent or copyright laws.

Article 26. Ownership of Property

Equipment purchased in part or wholly with federal funds shall be used by the Grantee in the project for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a federal agency. The Grantee shall be responsible for the operation and maintenance of equipment acquired with the grant. Property records must be maintained which will include a description, serial number, source and title, cost and percentage of federal participation in cost, location, use and condition, and sale price and date of disposal. A physical inventory of the property must be taken at least once every two years. Disposition of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation. If the Grantee is a non-profit corporation that dissolves, the assets from the grant project are to be distributed according to Alaska Statutory law, AS 10.20.290-10.20.452.

Article 27. Equal Employment Opportunity

The Grantee may not discriminate against any employee or qualified applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood. The Grantee shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph. The Grantee shall include the provisions of this article in every grant or contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors.

The Grantee shall promptly comply with all state directives considered essential to insure compliance with all federal and state laws, regulations, and policies pertaining to the prevention of discriminatory employment practices. Failure to perform under this article constitutes a material breach of the grant and could result in termination of the grant agreement.

Article 28. Americans with Disabilities Act (ADA)

Reasonable accommodations must be made to ensure or allow access by persons with disabilities to all services, programs or activities paid for with public funds. The Grantee is responsible for assuring compliance by their contractor's with ADA.

Article 29. Disputes

Any disputes concerning a question of fact arising under this grant which is not disposed of by mutual agreement shall be decided in accordance with CONTRACT CONTROVERSIES, AS 36.30.620-632 of the State Procurement Code.

Article 30. Conflicting Provisions

Unless specifically amended and approved by the Department of Law, the General Provisions of this grant supersede any provisions in other appendices.

PART C

INDEMNITY AND INSURANCE

Article 1. Indemnification

The Grantee shall indemnify, save harmless and defend the state, its officers, agents, and employees from all liability, including costs and expenses, for all actions or claims resulting from injuries or damages sustained by any person or property arising directly or indirectly as a result of any error, omission or negligent act of the Grantee, subcontractor or anyone directly or indirectly employed by them in the performance of this contract.

All actions or claims including costs and expenses resulting from injuries or damages sustained by any person or property arising directly or indirectly from the 's performance of this contract which are caused by the joint negligence of the state and the Grantee shall be apportioned on a comparative fault basis. Any such joint negligence on the part of the state must be a direct result of active involvement by the State.

Article 2. Insurance

Without limiting the Grantee's indemnification, it is agreed that the Grantee shall purchase and maintain in force at all times during the performance of services under the agreement the following policies of insurance when applicable. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Grantee's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the Contracting Officer prior to beginning work and must provide for a 30-day prior notice of cancellation, non-renewal or material change. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach and grounds for termination of the Grantee's services.

2.1 Worker's Compensation Insurance: The Grantee shall provide and maintain, for all employees of the Grantee engaged in work under this contract, Workers' Compensation Insurance as required by AS 23.30.045. The Grantee shall be responsible to ensure all subcontractors provide Workers' Compensation Insurance for anyone who directly or indirectly provides services under this contract. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection of not less than \$100,000 per person, \$100,000 per occurrence. Where applicable, coverage for all federal acts (i.e., U. S. L&H and Jones Act) must also be included.

2.2 Comprehensive (Commercial) General Liability Insurance: with coverage limits not less than \$300,000 combined single limit per occurrence and annual aggregates where generally applicable and shall include premises-operations, independent contractor, products/completed operations, broad form property damage, blanket contractual and personal injury endorsements.

2.3 Comprehensive Automobile Liability Insurance: covering all owned, hired and non-owned vehicles with coverage limits not less than \$100,000 per person/\$300,000 per occurrence bodily injury and \$50,000 property damage.

2.4 Professional Liability Insurance: covering all errors, omissions or negligent acts of the contractor, subcontractor or anyone directly or indirectly employed by them, made in the performance of this contract which results in a financial loss to the State. Limits required as per the following schedule:

Contract Amount	Minimum Required Limit
Under \$100,000	\$100,000 per occurrence/annual aggregate
\$100,000-\$499,999	\$250,000 per occurrence/annual aggregate

PART D

ACMP Special Award Conditions

Section 6217 Coastal Nonpoint Pollution Program Implementation

1. Travel vouchers or authorizations and time sheets to document personal services must be kept on file in the grant recipient's office.
2. Any publications or reports shall bear the ACMP and NOAA logos (available from DNR OPMP) on the cover or first page, and the following:

A publication (or report) funded by the Alaska Coastal Management Program, Department of Natural Resources, pursuant to National Oceanic and Atmospheric Administration Award No NA 17OZ2325. The views expressed herein are those of the author (s) and do not necessarily reflect the views of NOAA or its sub-agencies.

This requirement does not apply to reports submitted only to NOAA and which are not intended for public distribution, such as project progress reports and financial reports.

3. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with federal money, the Grantee shall state:
 - a) the percentage of the total costs of the project or program which will be financed with Federal money,
 - b) the dollar amount of Federal funds for the project or program, and
 - c) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.
4. The Grantee is prohibited from expending Federal or non-Federal grant funds, or in-kind goods or services, for purposes of providing transportation, travel, and any other expenses for any Federal employee.
5. If applicable, the Grantee must request prior approval to purchase equipment costing in excess of \$5,000 per unit and having a useful life of more than one year. This condition applies to equipment not specifically identified and justified in the recipient's proposal and approved budget.
6. The Grantee will be required to obtain approval from the Department before making any substantive changes in the project objectives, methods, budget or schedule.

7. Federal Office of Management and Budget Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (June 30, 1997) applies to this award notwithstanding section D-01 of the Department of Commerce Financial Assistance Standard Terms and Conditions.
8. Projects funded by ACMP that include a geographic information system (GIS) component shall comply with the GIS Protocols for the ACMP adopted by the Coastal Policy on June 21, 2002.